

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DIANE DENMARK,

Plaintiff

v.

Civil Action No. 04-12261-DPW

LIBERTY MUTUAL ASSURANCE
COMPANY OF BOSTON, THE GENRAD,
INC. LONG TERM DISABILITY PLAN,
THROUGH TERADYNE, INC., AS
SUCCESSOR FIDUCIARY

Defendants

MOTION OF PLAINTIFF TO ENLARGE THE DATE TO

COMPLETE DISCOVERY

WITH RULE 7.1 CERTIFICATION

NOW COMES the plaintiff and moves this Court to enter an order to enlarging the date to complete discovery in this matter from February 11, 2004 to a new date. The narrow purpose of this motion is really to clarify the Scheduling Order of this Court.

1. Plaintiff Diane Denmark ("Denmark") alleges that she is entitled to relief under 29 U.S.C. § 1132(a)(1)(B) ("ERISA"), and more specifically that defendant Liberty Mutual Assurance Company of Boston and the other defendants wrongfully denied her claim for long-term disability benefits.
2. Under the terms of the parties proposed Scheduling Order, the parties agreed as follows:

Motions for Discovery

January 20, 2005

Deadline for filing motions showing cause for discovery, if any party seeks any further discovery

February 11, 2005

Deadline for oppositions to motions for discovery

3. On December 9, 2004, this Court adopted the proposed Scheduling Order, but modified as follows:

...discovery is to be completed by **FEBRUARY 11, 2005**, unless shortened or enlarged by Order of this Court...

4. This Court's order did not, however, change the date for seeking to take discovery and opposing such a request.
5. On January 20, 2005, Denmark served a motion seeking limited discovery. Specifically, the plaintiff seeks discovery as follows:

DOCUMENT DISCOVERY

1. The Plaintiff requests that the Liberty produce all claims manuals, instructional and training documents available to Liberty's claims adjusters from October 3, 2001 (the date that Denmark sought benefits) through August 23, 2004(the date Liberty contended it had produced all relevant records).

2. The Plaintiff requests that Liberty produce the following documents pertaining to its relationship with Network Medical Review - Elite Physicians, Ltd. , from January 1, 2002 to the present:

- a. IRS 1099 form(s) regarding compensation paid by Liberty to NMR;
- b. Instructions provided by NMR to its participating physicians concerning

writing reports concerning insurance claimants;

c. Correspondence between Liberty and NMR concerning Denmark.

INTERROGATORY

Please state the number of files that Liberty and its affiliated companies have referred to NMR and NMR's affiliated companies or entities, including Elite Physicians Ltd., by year, how much Liberty and its affiliated companies pay for a review, and how much in total, by year, Liberty and its affiliated companies have paid to NMR and NMR's affiliated companies or entities, including Elite Physicians Ltd.

6. Defendants intend to oppose the motion seeking the above discovery.
7. Under the terms of the proposed Scheduling Order adopted by this Court, the defendants have up to and including February 11, 2005 to oppose Denmark's motion. That date coincides with the date to complete discovery. If the Court grant's Denmark's motion seeking limited discovery, the defendants will need a reasonable period of time to respond.

RULE 7.1 CERTIFICATION

Plaintiff's counsel certifies that he conferred with attorneys for the defendants but could not reach an agreement on this motion as the defendants deemed this motion superfluous.

WHEREFORE, the plaintiff moves this Court to enter an order enlarging the time period for completing discovery to a date that is the later of:

1. The date that this Court selects as the date for completion of discovery as permitted by this Court; or
2. The date that the defendants comply with a discovery request after this Court rules on a motion to compel discovery.

DIANE DENMARK,
By her attorney,

/s/ Jonathan M. Feigenbaum

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Dated: February 4, 2005